IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RANDY GUADALUPE ROJAS, *Appellant*.

No. 1 CA-CR 16-0789
FILED 12-7-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-001043-001
The Honorable Erin Otis, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Edward F. McGee
Counsel for Appellant

MEMORANDUM DECISION

Justice Rebecca White Berch[1] delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Peter B. Swann joined.

B E R C H, Justice:

¶1 Randy Guadalupe Rojas was convicted of one count of recklessly trafficking in stolen property. For the following reasons, we affirm the conviction but modify his credit for pre-sentence incarceration by one day.

FACTS AND PROCEDURAL HISTORY

¶2 On August 26, 2014, Mr. and Mrs. T. moved to a new residence and hired Metro Movers to transport their property. That afternoon, before the movers arrived at the new home, Mr. T. handed Mrs. T. a suitcase containing jewelry belonging to Mrs. T., and she placed it "against a wall tucked back to the left side of [the new master bedroom] closet."

¶3 The movers arrived at the new house at around 2:30 p.m. The moving company sent a few trucks and five employees to unload the trucks and unpack the boxes. Rojas and Efren Ochoa were assigned to unload the boxes in the master bedroom.

¶4 After the movers began unloading the items, Mrs. T. unloaded a wardrobe box and "started stacking hanging clothes in front of the suitcase" to hide it. Mr. T. checked on the suitcase twice that afternoon, and found it "present both times." On one occasion, Mrs. T. found Ochoa in her closet and asked him what he was doing. He said he was "looking for empty boxes." She replied, "[w]e already told you that we would take the empty boxes and put them out of the master bedroom for you to take."

¶5 Rojas and Ochoa left the house at 5:50 p.m., and the remaining workers left in another truck at 6:30 p.m. After the second truck left the house, Mrs. T. discovered that her suitcase was missing. She immediately

[1] The Honorable Rebecca White Berch, a retired Justice of the Arizona Supreme Court, has been authorized to sit in this matter pursuant to Article VI, Section 3, of the Arizona Constitution.

called the police and Scott Acridge, the owner of Metro Movers, and informed them the suitcase was missing. She asked Acridge "to please go down to the yard to search his employees and the trucks." Acridge called Ochoa several times, but could not reach him. He then contacted the driver of the other truck, who informed him that they were on their way back to the yard, but that the trucks were not traveling together.

¶6 Although Ochoa and Rojas left the house forty minutes before the second truck, the second truck arrived at the yard before Ochoa and Rojas. When they arrived, Rojas told Acridge the delay was attributable to driving on Bell Road instead of taking the freeway, which Acridge later testified did not "make any sense." Acridge searched the trucks, the employees, and the employees' backpacks, but did not find the suitcase.

¶7 That evening, as Georgia H. drove home from work, she saw a suitcase on the side of the road. Believing the suitcase might have fallen from someone's vehicle, she picked it up. Finding a receipt with Mrs. T.'s name and number inside the suitcase, she called Mrs. T., who relayed the information to the police. The police retrieved the suitcase and learned that some of the jewelry items were missing.

¶8 The Scottsdale Police Department obtained a warrant to search Ochoa's apartment. The officers found a pair of earrings and an iPod belonging to Mrs. T. inside the apartment. They also obtained information that led them to a pawn shop located in Phoenix.

¶9 Detectives Vahle and Toschik went to the pawn shop and interviewed the front desk worker, who said Ochoa and another person had recently visited the store. He admitted having "bought something" from them, but said that the items "had already been [sold]." In a trashcan in the shop, Detective Toschik found a bag containing jewelry that was later determined to belong to Mrs. T.

¶10 The Scottsdale Police Department eventually arrested Rojas and interviewed him. During the interview, Rojas admitted knowing Ochoa had taken the property and accompanying him to the pawn shop. He claimed, however, that he had nothing to do with stealing or selling the property.

¶11 The State charged Rojas with one count of theft and one count of recklessly trafficking in stolen property. The jury found Rojas guilty of trafficking in stolen property, but was unable to reach a verdict on the theft charge. Before sentencing, Rojas negotiated a plea deal on the theft count.

Rojas appeals the trafficking conviction, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-120.21(A).

DISCUSSION

¶12 Rojas makes three arguments on appeal. He argues that the evidence was insufficient to support his conviction, that the court erred by allowing the State to offer impermissible character evidence, and that the court erred in calculating his pre-sentence incarceration credit.

I. Sufficiency of the Evidence

¶13 At trial, the State sought to convict Rojas under a theory of accomplice liability. Rojas unsuccessfully argued he was a mere witness to both crimes. On appeal, Rojas argues that "the evidence was insufficient to establish that [Rojas] was an accomplice to the crime of reckless trafficking in stolen property." We disagree.

¶14 We review de novo whether sufficient evidence supports a conviction, *State v. Denson*, 241 Ariz. 6, 10, ¶ 17 (App. 2016), "considering the evidence and inferences drawn in the light most favorable to sustaining the verdict." *State v. Hancock*, 240 Ariz. 393, 398, ¶ 17 (App. 2016). We will uphold the conviction if "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Hancock*, 240 Ariz. at 393, ¶ 17.

¶15 A person commits trafficking in stolen property if he or she sells, transfers, distributes, dispenses, or otherwise disposes of the stolen property of another. A.R.S. §§ 13-2301(B)(3), -2307. And a person who "[a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense" can be liable as an accomplice. A.R.S. § 13-301(2).

¶16 During his interview with the officers, which was recorded and played in court during trial, Rojas said he "had nothing to do with" the theft of the suitcase, and claimed he first found out Ochoa had stolen the suitcase after they left Mr. and Mrs. T.'s house and he saw the suitcase inside the truck. Rojas said he told Ochoa, "you really took it, huh? . . . you were serious." As they began to drive away from the home, Rojas added, Ochoa began "looking through stuff" and "grabbin' stuff," before ultimately dumping the suitcase out the window through the passenger's side. The officers expressed doubt to Rojas about his claim that, while driving, Ochoa picked up the suitcase, looked through it, and threw it out the passenger window, but Rojas said they were used to picking up heavy

items. The officers then asked Rojas whether they would find his DNA on the jewelry, and Rojas replied that he "might've looked at a couple pieces," but had placed the items back in the suitcase, stressing he had looked through the items purely out of curiosity.

¶17 He admitted he went into the store with Ochoa, but claimed Ochoa was the one "in the front of the window talking to the guy," while he simply "wander[ed] around the store." Rojas added Ochoa received "like, a grand," and admitted Ochoa gave him about five to six hundred dollars of the proceeds. He emphasized, however, that Ochoa gave him the money to keep him from "saying nothing," but not because he was an accomplice to the sale.

¶18 We conclude sufficient evidence was presented from which a rational trier of fact could have concluded beyond a reasonable doubt that Rojas was Ochoa's accomplice. Rojas was in the truck with Ochoa, knew the property was stolen, and looked at and handled the jewelry. He went with Ochoa to the pawn shop, accompanied him into the store, and later received a substantial portion of the proceeds.

¶19 Merely receiving money after the property was sold in exchange for his silence would not necessarily make Rojas an accomplice because "[t]o be an accomplice, a person's first connection with a crime must be prior to, or during, its commission." *State v. Johnson*, 215 Ariz. 28, 34, ¶ 26 (App. 2007). But the jury could have rejected Rojas's explanation and concluded that the payment represented Rojas's portion of the proceeds of the crime. During his interview, Rojas initially denied going to the pawn shop and claimed the reason he and Ochoa arrived late at the yard was that they had stopped at a convenience store to get drinks. Given his diminished credibility, the jury could reasonably have found that Rojas aided Ochoa in committing the offense.

II. Introduction of Impermissible Character Evidence

¶20 At trial, the State called Detective Petermann, the officer who first contacted Rojas, to the stand. After the State asked him to introduce himself to the jury, he said he was "a City of Scottsdale police detective currently assigned to [the] repeat offender program." Rojas's counsel neither objected to nor moved to strike the statement. On appeal, Rojas claims the court erred "when it allowed the State to offer impermissible character evidence strongly inferring [Rojas] had been involved in other criminal misconduct by permitting Scottsdale Officer Brandon Peterman to

identify himself to the jury as a detective working in the 'repeat offender program.'"

¶21 Because Rojas failed to object at trial, we review for fundamental error. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 19 (2009). Under fundamental-error review, Rojas "must establish both that fundamental error exists and that the error in his case caused him prejudice." *Id.* at ¶ 20. Because we conclude Rojas did not suffer any prejudice, we need not consider whether the court erred by not *sua sponte* striking the statement.

¶22 In *State v. Gamez*, the case on which Rojas relies, "during examination of the officers by the prosecution, the 'major offender's unit' detail was mentioned nine times in connection with the assignment of the officers who testified as to the surveillance activity of defendant." 144 Ariz. 178, 179 (1985). Moreover, "the prosecutor brought this fact out in closing argument[,] stating 'in this particular case we had a number of police officers from the major offender's unit.'" *Id.* The Arizona Supreme Court concluded the unit's name impermissibly suggested the defendant was not a "small time operator" but, rather, "a habitual offender." *Id.* Despite the repeated references, the court concluded the error was harmless because the statements had "no influence on the verdict of the jury." *Id.* at 180.

¶23 Here, any arguable prejudice was less than that in *Gamez*. Detective Petermann's unit assignment was never otherwise mentioned during the six-day trial, and while Petermann said he was "currently"—that is, at the time of trial—assigned to the repeat offender unit, he was not asked if he was a member of that unit when he initially contacted Rojas. Therefore, we conclude Rojas suffered no prejudice.

III. Sentencing

¶24 The trial court granted Rojas credit for 288 days of presentence incarceration. Rojas argues that the trial court "committed a mathematical error" in its calculation of his pre-sentence incarceration credit, and that his credit was "289 days and not 288." The State concedes the error, and we agree. We therefore amend Rojas's pre-incarceration credit to 289 days.

CONCLUSION

¶25 We affirm Rojas's conviction but modify his sentence to grant him 289 days of pre-sentence incarceration credit rather than 288 days.

AMY M. WOOD • Clerk of the Court
FILED: AA